IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

WP(C).No. 37264 of 2003(J)

PETITIONER:

V.M.BABY,
VICE PRESIDENT, KONNATHADY GRAMA PANCHAYAT,
KONNATHADY, IDUKKI DISTRICT.

#1. KONNATHADY GRAMA PANCHAYAT,
REP. BY ITS SECRETARY, KONNATHADY, IDUKKI DISTRICT.

2. THE SECRETARY,
KONNATHADY GRAMA PANCHAYAT, KONNATHADY,
IDUKKI DISTRICT

(1 & 2 ARE IMPLEADED AND SUBSTITUTED AS PETITIONERS AS PER ORDER DTD 20.6.06 IN IA 5344/06.)

BY ADV. SRI.M.V.BOSE
SRI.BABU JOSEPH KURUVATHAZHA
SRI.K.I.SAGEER

RESPONDENTS:
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1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE SECRETARY,
KERALA STATE RURAL DEVELOPMENT BOARD,
THIRUVANANTHAPURAM-695 001.

3. THE DISTRICT COLLECTOR, IDUKKI.

4. THE TAHSILDAR (R.R), NEDUMKANDAM.

BY GOVERNMENT PLEADER SRI.SHYSON P.MANGUZHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.37264/2003

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF INTIMATION DT.13.9.1994 WITH THE DETAILS OF INSTALMENT PAYMENTS FROM THE 2ND RESPONDENT.

EXT.P2: TRUE COPY OF LETTER DATED 14.11.2002 FROM THE TAHSILDAR (RR), NEDUMKANDAM ISSUED TO SECRETARY, KONNATHADY GRAMA PANCHAYAT.

EXT.P3: TRUE COPY OF JDUGMETN IN OP 37666 OF 2002 DATED 12.12.2002.

EXT.P4: TRUE COPY OF INTIMATION DATED 30.7.2003 FROM LAW MINISTER'S OFFICE.

EXT.P5: TRUE COPY OF INTIMATION DT.30.10.2003 FROM THE TAHSILDAR (R.R.) NEDUMKANDOM.

EXT.P6: TRUE COPY OF THE BAN ORDER DATED 14.11.2003 OF THE TAHSILDAR (R.R) NEDUMKANDAM.

EXT.P7: COPY OF THE RECEIPT NO.A2-1307/90 DTD. 29.1.2005.

EXHIBITS OF R3

ANNEXURE R3(a): A TRUE COPY of the REPORT DATED 26.5.2005.

//TRUE COPY//

C.N.RAMACHANDRAN NAIR, J.

WPC NO. 37264 OF 2003

Dated this the 8th day of March, 2007

J U D G M E N T

The petitioner-Panchayat is challenging revenue recovery proceedings for recovery of arrears of loan and interest due to the second respondent-Corporation. The loan was availed in the year 1994-95 and appears to have been for a period of 15 years. According to the second respondent, which is a Government Corporation, the arrears due as on 16/04/2005 after setting off Rs.22,80,000/- already paid by the Panchayat was Rs.47,10,699/-. Obviously, there is overdue interest on this amount payable for another 1½ years which will certainly take balance liability to above Rs.52 lakhs. Therefore, when the entire liability is paid up by the Panchayat, the total commitment of the Panchayat for the construction of the building is above Rs.75 lakhs.

2. When the matter came up for hearing before this court in February 2005, this court felt that Panchayat took a destructive decision in taking up the construction of the building and therefore this court directed the District collector to conduct enquiry into the whole affair. Report dated 26.05.2005 from the

District collector is produced by the Government Pleader and the Collector has stated that his enquiry revealed that monthly rent that the Panchayat is getting from the whole building is Rs.2,132/-. In otherwords, on Rs.70 lakhs commitment, the annual return of the Panchayat is less than Rs.25,000/-. The building was obviously not for any public purpose, but was intended as a commercial venture on borrowed capital. Even though in this case, beneficiary is a Government Corporation, the net result is that funds reaching the Panchayat for application for public welfare is absorbed to serve a debt, incurred on account of the folly of the Panchayat. Having regard to the meagre returns, the District Collector rightly recommended sale of the property so that the Panchayat is saved from further loss. The Collector got the land and building of the Panchayat valued by the Assistant Executive Engineer, PWD (Buildings) at Rs.26,46,222/- which was in May 2005. Obviously, the market value would have gone up in the course of time. It is not proved whether the Panchayat has settled the liability in terms of OTS benefit stated to be granted to it by the second respondent. If liability is not settled in terms of

OTS scheme, then of course the Panchayat will forfeit the OTS benefit granted. If liability is not settled, I think the sale of the building is the only solution to save the Panchayat and to protect the interest of the financial institution, which is a Government agency.

3. In the circumstances, writ petition is disposed of with direction to the Revenue Recovery Authorities to proceed for sale of the property in public auction after due publicity, if liability is not so far settled, at the earliest.

4. This is not the only one case that has come before this court wherein this court found that Local Bodies are making massive investments in commercial ventures mainly construction of shopping complexes, which are not viable in a commercial sense, leading to waste of slender finances of the Panchayats, which prevent the Panchayat taking up their statutory duties which are for public welfare. If restrictions are not imposed on local authorities from engaging in unwise commercial ventures, the purpose of their formation will not be achieved. Therefore, it is for the Government to consider what restrictions should be

imposed by law against Panchayaths taking up commercial ventures without atleast getting approval from the Government.

5. Registry will forward a copy of this judgment to Secretary to Government, Department of Local Administration for policy decision by Government and for implementation through amendment of law.

Writ petition is disposed of as above.

C.N.RAMACHANDRAN NAIR, JUDGE

Rp